



2002-0089957

RECORDING REQUESTED BY:

Galilee Harbor Community Association  
300 Napa Street  
Sausalito, California 95965

Recorded  
Official Records  
County Of  
Marin  
JOAN C. THAYER  
Recorder

REC FEE .00

02:01PM 10-Oct-2002 SI  
Page 1 of 15

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control,  
Region 2  
700 Heinz Street  
Berkeley, California 94710-2721  
Attention: Barbara J. Cook, P.E., Chief  
Cleanup Operations Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(County of Marin, Assessor's Parcel Number 64-082-01, Block 26 at  
300 Napa Street, Sausalito, CA, Galilee Harbor Parcel One Site)

This Covenant and Agreement to Restrict Use of Property ("Covenant") is made by and between the Galilee Harbor Community Association (the "Covenantor"), which is the current owner of property situated in Sausalito, County of Marin, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, subdivision(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant. The Parties enter into

this Covenant pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5, subdivision (a)(1)(C).

ARTICLE I  
STATEMENT OF FACTS

1.01. The Property, totaling approximately one acre, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Richardson Bay to the northeast and small remnant tidal and marsh areas to the northwest. Office buildings are located to the southwest, and on the southeast the site is bounded by an unpaved portion of Napa Street. Parcel One is a relatively level area which slopes off gently to the Bay in the intertidal zone. This property is more specifically described as County of Marin Assessor's Parcel Number 64-082-01, Block 26.

1.02. Remediation was conducted at the Site pursuant to Health and Safety Code section 25356.1(h)(1). A Removal Action Workplan for the Site, prepared in accordance with Health and Safety Code section 25323.1, was approved by the Department on March 23, 1999. The site is divided into the following three areas for the purpose of remediation: upland, intermediate (middle) and intertidal (shoreline) zone. The remediation consisted of capping the contaminated soils in place. The Cap at the three areas (described in Exhibit B) consists of the following: for the upland area - installation of an asphalt pavement over the contaminated soil; for the intermediate zone - placement of a 20 mil synthetic liner over the contaminated soil followed by about one foot of clean soil; and for the intertidal zone - a 40 mil synthetic liner placed over the contaminated soil followed by a geotextile fabric, about a foot of clean soil/sediments over the fabric, and finally vegetation planted on

top of the sediments. Because hazardous substances, as defined in Health and Safety Code section 25316, which are also hazardous materials as defined in Health and Safety Code section 25260, including arsenic, copper, lead, mercury, total petroleum hydrocarbons (TPH), tributyl tin oxide (TBTO), and polynuclear aromatic hydrocarbons (PAHs) remain in the soil the Removal Action Workplan required that a deed restriction be recorded as part of the site remediation to maintain land use as recreational and commercial/industrial. The Removal Action Workplan required that monitoring of the Cap be performed periodically to ensure its integrity. The Removal Action Workplan also required that a review of the effectiveness of the Cap be conducted every five years.

The operation and maintenance of the Cap is described in paragraph 4.05.

1.03. The contaminants of concern in soil and their maximum concentrations are as follows: arsenic (61 ppm), copper (4,800 ppm), lead (2,800 ppm), mercury (100 ppm), TPH (6,800 ppm), TBTO (150.3 ppm), and PAH (3,130 ppm of benzo(a)anthracene). Based on the Preliminary Endangerment Assessment approved by the Department on December 30, 1998, the Department concluded that the Property, as remediated, does not present an unacceptable threat to human safety or the environment, if the property is limited to recreational, commercial and industrial use.

## ARTICLE II

### DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its

successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03.     Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04.     Improvements. "Improvements" means all buildings, roads, driveways, and paved parking areas constructed or placed upon any portion of the Property.

### ARTICLE III GENERAL PROVISIONS

3.01..     Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Health and Safety Code section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02.     Binding upon Owners/Occupants. Pursuant to Health and Safety Code section 25355.5(a)(1)(C), this Covenant binds all Owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the Owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471,

subdivision(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the Owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by Health and Safety Code section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

#### ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of

age.

- (d) A day care center for children.

4.02. Soil Management

- (a) Activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) are not allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property that will remove more than one cubic yard of soil.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops);
- (b) Drilling for drinking water, oil, or gas without prior written approval by the Department.

4.04. Non-Interference with Cap. The following conditions are required to maintain the effectiveness of the Cap:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior review and written approval by the Department.
- (b) All uses of the Property shall preserve the integrity of the Cap.
- (c) The Cap shall not be altered without written approval by

the Department.

- (d) Owner shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap, and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Operation and Maintenance of the Cap. The Owner shall conduct the following operation and maintenance of the Cap:

- (a) Inspect annually (in December) the asphalt pavement and the portion of the Cap for the inter-tidal and the intermediate areas for cracks or signs of deterioration, that as a result may cause permeation through the Cap or inadequate drainage;
- (b) Repair any significant crack(s) or any signs of deterioration immediately;
- (c) Maintain proper sloping or grading to promote drainage;
- (d) Every 15 years, apply seal or coating over the asphalt portion of the Cap, or repave the asphalt portion of the Cap with a minimum of 2 inches of asphalt.
- (e) Maintain vegetation on the intertidal zone consistent with the guidelines provided by the San Francisco Bay Regional Water Quality Control Board or the U.S. Army Corps of Engineers or guidelines referenced by these agencies.

- (f) By March 15<sup>th</sup> of each year, submit to the Department an Annual Report that includes results of inspection and the corrective action taken to address observed problems encountered during inspection.

4.06. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

#### ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

#### ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.



6.02        Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03        Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII  
MISCELLANEOUS

7.01.        No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02.        Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03.        Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Marin within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04.        Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or

to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Galilee Harbor Community Association  
Attn: Donna Bragg  
300 Napa Street  
Sausalito, California 95965

To Department: Site Mitigation Branch Chief  
Attn: Project Manager  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

7.07. Authority to Bind Party. Each signatory to this Covenant certifies that he or she is fully authorized by the Party he or she represents to enter into this Covenant, to execute it on behalf of the Party represented and legally to bind that Party.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Galilee Harbor Community Association

By: *Richard J. Gall*

Title: PRESIDENT

Date: 07/12/02

Department of Toxic Substances Control

By: *Barbara J. Carr*

Title: Site Mitigation Branch Chief

Date: 10/8/2002

STATE OF CALIFORNIA )

COUNTY OF )

MARIN )

On this 12<sup>th</sup> day of JULY, in the year 2002,

before me SUSAN DUPUIS, NOTARY PUBLIC, personally appeared

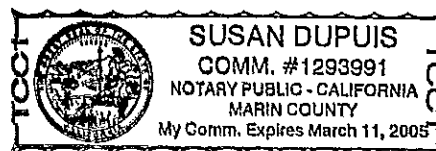
RICHARD GRAEF

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Susan Dupuis



STATE OF CALIFORNIA )

COUNTY OF ALAMEDA )

On this 8th day of OCTOBER, in the year 2002,

before me Frank Piscitelli, personally appeared

BARBARA JEAN COOK

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

[Handwritten Signature]

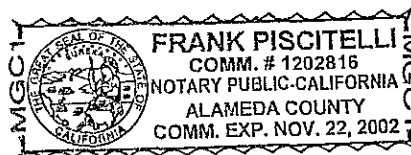


EXHIBIT A  
DESCRIPTION OF LAND

All that certain real property situate in the City of Sausalito County of Marin, State of California, and is described as follows:

PARCEL ONE:

BEGINNING at the Northeast corner of Humboldt Avenue and Napa Street, being 940 feet distant Northeasterly from Bonita Street in the City of Sausalito; thence Northwesterly along the Northerly line of Humboldt Avenue 240 feet; thence Northeasterly at right angles 400 feet to the Southerly line of Donohue Avenue; thence Southeasterly at right angles 240 feet to the Westerly line of Napa Street and thence Southwesterly at right angles along the last named line 400 feet to the place of beginning.

BEING Block 206 in said City of Sausalito, according to the Map of the Survey authorized in Section One of said Supplementary and Amendatory Act, which map is entitled, "Map No. 1 of Salt Marsh and Tide Lands, situate in the County of Marin, State of California", on filed in the Office of the said Commissioner at San Francisco, certified copies thereof having been filed with the Surveyor General of the State and with the County Recorder of the City and County of San Francisco.

## APPENDIX B

UPLAND ZONE INTERMEDIATE ZONE INTERTIDAL ZONE

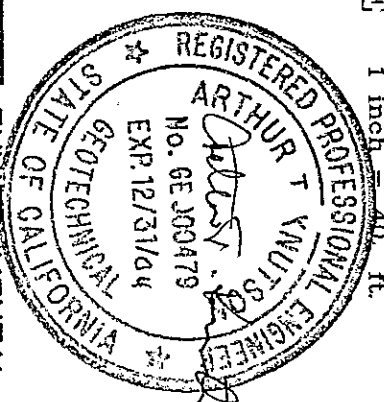
FINISHED GRADE SITE PLAN  
GALLEE HARBOR  
SAUSALITO, CALIFORNIA

- UPLAND ZONE : Area confined with asphalt parking area and pedestrian/bike path.
- INTERMEDIATE ZONE : Area confined with 20-MIL HDPE liner clean fill and vegetation.
- INTERTIDAL ZONE : Area confined with extrusion welded 40-MIL HDPE liner and clean wetlands fill.

☒ On site storage of contaminated soil from intertidal zone.



SCALE 1 inch = 40' ft.



ENVIRONMENTAL INC.  
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415.435.6782 FAX 415.435.1035



NAPA STREET

